IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2522 of 2007
To
FIRST APPEAL No. 2537 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE SPECIAL LAND ACQUISITION OFFICER & 2 - Appellant(s)
Versus
GOHIL MAVSANG DIPSANG - Defendant(s)

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Appearance :
Mr.S.S.Shah,learned Government Pleader, for the appellants in First Appeal Nos.2522 to 2529 of 2007.
Ms.Bhavika Kotecha,learned Assistant Government Pleader, for the appellants in First Appeal Nos.2530 to 2537 of 2007.

Mr.S.P.Majmudar,learned advocate for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 25/06/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr. S.P.Majmudar, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. By filing the instant appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, what is challenged is the legality of common judgment and award dated February 16,2005, rendered by the learned Joint District Judge (FCT No.3) Bharuch in Land Acquisition Reference Nos. 561 to 576 of 2003, by which the claimants have been awarded in all compensation at the rate of Rs.2400/- per Are for their acquired lands.

3. The Executive Engineer, Narmada Yojana, Unit

No.7, of Sardar Sarovar Narmada Nigam Ltd., Bharuch proposed to the State Government to acquire the lands of village Tavra, District Bharuch for the public purpose of construction of T-1 Minor Canal under Narmada Yojana. On perusal of the said proposal, the State Government was satisfied that the lands mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued which was published in the Official Gazette on January 27,2000. The owners of the lands were served with notices as required by Section 4 of the Act. They had opposed the proposed acquisition. After considering their objections, necessary report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the same, the State Government was satisfied that the lands of village Tavra, specified in the notification published under Section 4 of the Act, were needed for the public purpose of construction of T-1 Minor Canal under Narmada Yojana. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on February 17,2000. The interested persons were thereafter

served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.710/- per Are i.e. Rs.7.10 Ps.per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Bharuch, where they were registered as Land Acquisition Reference Nos. 561 to 576 of 2003.

4. On behalf of the claimants, witness Vijaysinh Hathisinh, who was claimant in Land Acquisition Reference No.576 of 1993, was examined at Exh.38. After giving particulars of the lands acquired, the witness asserted before the Court that the lands

acquired were highly fertile and that each claimant was able to raise crops of Tuver, Banana, Sugar cotton etc and earned substantial income. The witness also mentioned that lands of village Zadeshwar, which is quite near the lands acquired, were also acquired earlier and that on the basis of the award of the Reference Court relating to the lands of village Zadeshwar the claimants were entitled to enhanced compensation at the rate of Rs.200/- per sq.mt. The witness mentioned in his testimony that the lands acquired from village Zadeshwar were similar in all respects, including fertility, to the lands acquired in the instant case. It was also mentioned by he witness that the potential value of the lands acquired was high inasmuch as several buildings and industries had come up near the lands acquired.

Though this witness was cross-examined by the learned counsel for the acquiring authorities nothing substantial could be elicited nor the assertion made by the witness that lands acquired from village Zadeshwar were similar in all respects to the lands acquired in the instant case, could be demonstrated to be untrue.

It may be mentioned that inspite of several opportunities having been offered, no witness was examined on behalf of the acquiring authorities.

5. On the basis of the evidence adduced by the claimants, the Reference Court was of the opinion that previous award of the Reference Court, relating to the lands of village Zadeshwar, was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. The Reference Court noticed that there was gap of time between notifications published under Section 4(1) of the Act for acquiring the lands from village Zadeshwar and publication of notification issued under Section 4(1) of the Act for acquiring the lands in the instant case and, therefore, the claimants were entitled to the benefit of rise in price of the lands at the rate of 10% per annum. In the ultimate analysis, the Reference Court has held that the claimants are entitled to compensation in all at the rate of Rs.2400/- per Are i.e. Rs.24/- per sq.mt. by the impugned award, giving rise to the above numbered appeals.

6. This Court has heard Ms.Bhavika Kotecha, learned Assistant Government Pleader, for the appellants and Mr.S.P.Majmudar, learned counsel for the claimant/claimants in each appeal at length and in great detail. This court has also considered the documentary evidence produced by the learned counsels for the parties for its consideration.

7. It is true that no evidence was led by the claimants to establish that they were earning substantial income from the sale of agricultural produces. However, the said fact pales into insignificance inasmuch as enhanced compensation was never claimed on the basis of yield. The record does not indicate that enhanced compensation was claimed on the basis of comparable sale instances. What was relied upon by the claimants in support of their claim for enhanced compensation was previous award of the Reference Court relating to the lands of village Zadeshwar, which was brought on record through the testimony of witness Vijaysinh Hathisinh examined on behalf of the claimants. A perusal of the said award makes it evident that the lands from village Zadeshwar were acquired for the public purpose pursuant to publication of notification

issued under Section 4 of the Act in the Official Gazette on May 25, 1989 and the Reference Court, after appreciating the evidence adduced by the parties, enhanced the compensation payable to the claimants at the rate of Rs.20/- per sq.mt. It is well settled principle of law that previous award of the Reference Court relating to a village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining the market value of similar lands acquired subsequently from the adjoining village. The relevancy of the previous award of the Reference Court relating to the lands of village Zadeshwar stands well established by reliable testimony of witness Vijaysinh Hathisinh. As observed earlier, no witness was examined on behalf of the acquiring authority nor the relevancy of the previous award relating to the lands of village Zadeshwar could be challenged during the course of cross-examination of the witness examined by the claimants. Therefore, this Court is of the opinion that the Reference Court was justified in placing reliance on previous award of the Reference Court relating to the lands of village Zadeshwar for the purpose of determining market value of the lands acquired in the instant case.

During the course of hearing of the instant appeals, it is not pointed out by the learned Assistant Government Pleader for the appellants that the previous award of the Reference Court relating to the lands of village Zadeshwar was modified by the High Court. Thus, there is no manner of doubt that the previous award of the Reference Court relating to the lands of village Zadeshwar has attained finality. As observed earlier, there is gap of time between the issuance of notification in the Official Gazette for acquiring the lands of village Zadeshwar and the lands acquired in the instant case. It is a well known fact that the prices of the lands never remain static and go on increasing day by day. Under the circumstances, this Court is of the opinion that the Reference Court was also justified in granting benefit of rise in price of the lands to the claimants at the rate of 10% per annum. The calculation of the amount of compensation payable to the claimants worked out by the Reference Court on the basis of previous award of the Reference Court relating to the lands of village Zadeshwar is not in dispute before this court in the instant appeals. On re-appreciation of evidence adduced by the parties before the Reference Court, this Court is of the

opinion that correct findings of facts have been recorded by the Reference Court to which well settled principles of law have been applied. The learned Assistant Government Pleader has failed to persuade this Court to take a view different than the one taken by the Reference Court on appreciation of evidence adduced before it. Thus, the appeals, which lack merit, deserve dismissal.

8. For the foregoing reasons, the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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